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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1223

KARL H. MEYER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Petitioner files this reply to respond to Respondent's reliance upon *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461 (1969), cert. denied, 396 U.S. 39 (1969), and *Feiner* v. *New York*, 340 U.S. 315 (1950), and to answer Respondent's contention that the City's unlawful interference with defendants' protected free speech may be excused by the good faith of the police.

I.

City of Chicago v. *Lawrence*, 42 Ill. 2d 461 (1969), is a case of "hardcore conduct"[1] in which the defendants were convicted for affirmative actions unrelated to speech: continued pounding on the door of a police officer's house after twice being ordered to desist. *Lawrence* is thus in line with earlier decisions upholding convictions for conduct not speech or speech-related,[2] and is inapposite to the present case, where, as the Respondent concedes, (Brief p. 7) it was "the dialogue between the petitioner and the crowd" which led the police to take action against Petitioner.

Contrary to Respondent's contention (Brief, p. 7), *Lawrence* does not reach the issues of protected First Amendment speech and overbreadth. The Illinois Supreme Court, in *Lawrence*, dismissed those contentions as "hypothetical situations . . . in which . . . [defendants] suggest a person could violate the ordinance by engaging in 'constitutionally-protected' conduct." (42 Ill. 2d at 464) *Lawrence* does, however, hold that the Chicago ordinance

> "must be read in a sensible way, without giving necessarily general terms like 'interference' such a literal application as would lead to undue restrictions on speech or some other constitutionally protected conduct." (42 Ill. 2d at 463-464)

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[1] See *Brown* v. *Louisiana*, 383 U.S. 131, 147-148 (1966) (Brennan, J. concurring).

[2] *People* v. *Turner*, 265 N.Y.S. 2d 841 (1965), affirmed 271 N.Y.S. 2d 829 (1966), cert. granted, 385 U.S. 917 (1966), writ dismissed as improvidently granted, 386 U.S. 273 (1967); *U. S.* v. *Woodward* 376 F. 2d 136 (7th Cir. 1967).

Yet, the decision below construes and applies the ordinance so as to restrict and abridge free speech, and is thus in conflict with *Lawrence* and the decisions of this Court in *Gregory* v. *Chicago*, 394 U.S. 111 (1969); *Cox* v. *Louisiana*, 379 U.S. 536 (1965); and *Edwards* v. *South Carolina*, 372 U.S. 229 (1963).

II.

Respondent (Brief, p. 7) takes the position "that the dialogue between the petitioner and the crowd created a tense situation [and] [t]he audience reacted physically and there was an imminent threat of continued violence" and (Brief, p. 5) attempts to justify the City's interference with Petitioner's protected free speech as "police action sanctioned by *Feiner* v. *New York*, 340 U.S. 315 (1950)." In *Feiner*, a speaker before a racially-mixed group urged the blacks to take up arms against the whites and fight for equal rights. This Court, holding that the speaker had passed the bounds of argument or persuasion and had undertaken "incitement to riot" (340 U.S. at 321), affirmed a conviction for disorderly conduct.

Respondent confuses incitement, *Feiner*, with free speech. Petitioner's actions were at all times peaceful and orderly, *Gregory* v. *Chicago*, 393 U.S. 111 (1969), and at no time did he engage in incitement or "fighting words", *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942). Free speech by its very nature invites dispute, "creates dissatisfaction with conditions as they are [Petitioner spoke, in 1967, against this country's involvement in the Viet Nam war], or even stirs people to anger." *Terminiello* v. *Chicago*, 337 U.S. 1, 4 (1949). Yet, on Re-

spondent's theory (Brief, p. 7), the First Amendment notwithstanding, free speech may be abridged, so long as the police act in good faith. But the paramount duty of the Respondent, and the police, was to protect Petitioner's "constitutional right to talk" (*Feiner*, 340 U.S. 315, 326, Black, J., dissenting), and to rule otherwise makes free speech subject to, and determined by, the violence of the opposition. See Kalven, *The Negro and The First Amendment* (1965) pp. 140-160.

Respondent relies on the majority opinion in *Feiner*, even though the Illinois Court's *per se* when-speech-may-be-interrupted rule, which is the basis for that Court's affirmance of Petitioner's conviction, is grounded upon the Illinois Court's interpretation of Mr. Justice Black's *dissent* in *Feiner*. *City of Chicago* v. *Gregory*, 39 Ill. 2d 47, 58 (1968). The Illinois rule, which Mr. Justice Black, joined by Mr. Justice Douglas, has recognized raises "troublesome questions" about the fragility of First Amendment rights (394 U.S. 111, 121-122), continues to be the law in Illinois notwithstanding this Court's reversal of the Illinois Court's *Gregory* decision (Appendix to Petition for Certiorari herein, p. 4a), and the Illinois rule will continue to be the law, and be used to abridge protected free speech, unless struck down by this Court in this case.

For the reasons set forth herein and in the Petition for Certiorari, Petitioner asks that this Court grant review and reverse the Court below.

Respectfully submitted,

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